IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Writ Petition No. 402 of 2004 (S/S)

Rajesh Chandra Dabral
Aged about 36 years
S/o Late Nathi Lal Dabral
R/o Village & P/O Kishanpur,
Pauri, ……Petitioner

Versus

1. State of Uttaranchal through Secretary,
   Education, Uttaranchal

2. Director
   Higher Education, Haldwani, Nainital

3. Deputy Director
   Higher Education, Camp Officer,
   Dehradun ……..Respondents

Sri Subhash Upadhyay & Sri Anil Dabral, learned counsel for the petitioner.
Sri Harendra Belwal, Brief Holder for the State.

Hon'ble B.C. Kandpal, J.

By way of this Writ Petition, a direction in the nature of mandamus has been sought by the petitioner commanding the respondents to regularize the service of the petitioner on the post of Driver.

Brief facts giving to this writ petition are that the petitioner was appointed as a Driver for a period of six months with effect form 22.04.1999 on a consolidated pay of Rs. 3,000/- p.m. The petitioner was appointed against the vacant and substantive post of Driver as is evident from the Annexure-1 to this writ petition. The petitioner continued in services and various appointment letters extending the period of his services were issued by the respondents time to time. The petitioner has been working in the office of the respondents till today. Initially, the period of appointment was

increased for a period of six months and later on for a period of one year further so on.

The petition further reveals that several representations were moved by the petitioner to the Regional Higher Education Officer for regularization of his services and payment of minimum pay scale but till date nothing has been done.

It has also been averred in the writ petition that on similar facts and circumstances, a class 4th employee who had been working for the last 5 years filed a writ petition before this court and the direction was issued commanding the respondents to pay minimum of pay scale and consider his case for regularization in case regular post is available. Copy of this order passed by this court has also been annexed alongwith petition.

It has also been averred in the writ petition that the post of Driver in the Department was created way back in the year 1996 and still exists today but the petitioner who is working for the last several years against the said vacant post is not being regularized in the services.

The learned counsel for the respondents has filed the counter affidavit and thereafter the petitioner has also filed the rejoinder affidavit.

Heard learned counsel for the parties and perused the record.

The record shows that the petitioner was appointed as a Driver on fixed salary as well as on the temporary basis for the period till the regular appointment was made. The record shows that the post of the Driver is vacant in the Department but the regular appointment on the post of the Driver could not be made as yet.

The petitioner has stated in paragraph 5,6 & 7 to the writ petition that he was appointed on the vacant and substantive post of the Driver on consolidated pay of Rs. 3,000/- p.m. and the petitioner has been performing the duties as a regular Driver in the Department for a long time. It has also mentioned in those paragraphs that the petitioner has moved representation to the Higher Officers to the Department but nothing has been done so far.

The respondents in the counter affidavit have not denied the averment made in paragraph 5,6, & 7 to the writ petition. The respondents, on the other hand, have also not denied that the post of the Driver in the Department is vacant. Therefore, it is admitted case that the petitioner was appointed on the post of Driver on a consolidated salary for the period till the regular appointment on the post of the Driver was made and post of Driver is still vacant in the respondents' office.

The petitioner in paragraph 11 to the writ petition has also stated that the post of the Drive in the Department was created way back in the year 1996 and it6 exists still today and the petitioner who is working for the lat 5 years against the such vacant post is liable to be regularized in services.

The respondents in reply to this paragraph has pleaded in paragraph 12 of the counter affidavit that *"that in reply to the contents of para 11 of the writ petition is to be submitted that as per Govt. orders of Uttaranchal Shasan no appointments are being made at this time tad furthermore it is to be added that whenever any decision for appointment is made later on at Govt. level then, the petitioner's case may be considered.*

It is also made clear that the appointment of the petitioner on the post of the Driver is not disputed at all and the respondents have also not placed any document before this

court that there had ever been any bread in the services of the petitioner as yet.

The petitioner has filed the rejoinder affidavit and in paragraph 6 to the rejoinder affidavit, it has been averred that even today the post of the Driver in the pay scale of Rs. 3,050-4,950/- is lying vacant in the officer of the respondent no. 3 where the petitioner is working. The petitioner has filed the copy of the order dated 12.07.2001 and 20.01.2003 issued by the Secretary Uttaranchal Government which reveals that the post of the Driver n the pay scale of Rs. 3050-4,950/- is yet vacant. So in view of these documents, the respondent cannot plead that the post of the Driver in the Department is not vacant.

The picture is further made clear on the basis of the copy of the advertisement filed by the petitioner alongwith the application before this court which reveals that the respondents have issued advertisement for the appointment on the post of Driver in the Department and this advertisement shows that there are total 6 posts lying vacant out of which 4 posts are for general category and one post each for Scheduled Castes and Backward classes.

Keeping in view the aforesaid aspect of the case, it is quite clear that the posts of the Drivers are lying vacant in the Department hence it is in this back drop, the request of the petitioner for regularization on the post of the Driver in the services has to considered in a positive manner.

The **Hon'ble Supreme Court** in a case reported in *(1991) 1SCC pages 28 Jacob M. Puthuparambil & other Vs. Kerala Water Authority and others has observed as follows:-*

"India is a developing country. It has a vast surplus labour market. Large scale unemployment offers a matching opportunity to the employer to exploit the needy. Under such

market conditions the employer can dictate his terms of employment taking advantage of the absence of the bargaining power in the other. The unorganized job seeker is left with no option but to accept employment on take-it-or-leave-it terms offered by the employer. Such terms of employment offer no job security and the employee is left to the mercy of the employer. Employers have betrayed an increasing tendency to employ temporary hands even on regular and permanent jobs with a view to circumventing the protection offered to the working classes under the benevolent legislation enacted form time to time. One such device adopted is to get the work done through contract labour. It is in this backdrop that we must consider the request for regularization in services."

the **Hon'ble Supreme** Court in another case reported in *(1998) 1 SCC Page 122 P & "T Department through Bhartiya Dak Tar Mazdoor Manch Vs. Union of India has observed:-*

"Of those rights the question of security work is utmost importance. If a person does not have the feeling that he belong to an organization engaged in production he will not put forward his best effort to produce more. That sense of belonging raises only when he feels that he will not be turned out of employment the next day at the whim of the management. It is for this reason it is being repeatedly observed by those who are in charge of economic affairs of the counters in different parts of the would that as far as possible security of work should be assured to the employees so that they may contribute to the maximization of production. It is again for this reason that managements and the governmental agencies in particular should not allow workers to remain as casual laborers or temporary employees for an unreasonable long period of time."

In view of the observations made by the Hon'ble Supreme Court and on basis of the document available on record, I come to the conclusion that the respondents should consider the case tot the petitioner for his regularization in the services on the post of the Driver n a positive manner.

The writ petition is allowed. The respondents are directed to decide the representation of the petitioner in a positive tan sympathetic manner by passing speaking and reasoned order. However, the petition shall move the representation before the remnants with a period of 15 days along with he certified copy of the judgment passed by this court and the respondents shall thereafter decision the case of the petitioner for regula4rization in the service on the post of the Driver thereafter within a period of 30 days by passing speaking and reasoned order.

Within the aforesaid observations, the writ petition is disposed of finally.

(B.C. Kandpal, J.)

5th July, 2005
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